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The reports of the various sections of the association presented as usual many interesting and valuable suggestions for the amendment both of substantive and remedial law, chiefly in matters of detail. Much interest centered about the discussion of a report of a special committee appointed to examine the community property laws, submitted to the voters of the state by a referendum petition. The association went on record as opposing the proposed laws as insufficient and unsatisfactory in their present form.

The association unanimously adopted a report of a special committee on the unlawful practice of law by corporations and others, recommending the passage of an act of the legislature to make such practice a misdemeanor. Such an act has already been passed in twenty-three states. The degradation of the professional relation involved in the commercial practice of the law has consequences which reach far into our social life. Organized society is already paying a heavy price in the increasing disrespect in which the law is held for its negligent omission to insist on the highest standards in that profession. The judiciary will inevitably suffer degeneration if the average standard of the lawyer is lowered. Moreover, there is little doubt that the breaking of the personal tie between lawyer and client incident to the interposition of a corporation or other agent between the two is responsible for many evils in our social and economic system.

*O. K. M.*

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# Comment on Recent Cases

ADMIRALTY: THE RULE OF DIVIDED DAMAGES AND THE BRUSSELS CONVENTION OF 1910—Critics of the common law, which is harnessed with rules of contributory negligence in tort cases, have often commented upon the greater fairness of the admiralty rule of equally divided damages. The common law, indirectly criticized in this way, has, however, been made less rigorous either by an extension of the "last clear chance" doctrine or by statute. A tendency towards a law which will permit judges or juries to apportion damages according to the degrees of fault has not yet been very marked, although there is some authority and some legislation in that direction.[2] Meanwhile the admiralty jurists

[1] See 29 Yale Law Journal, 896; 29 Id. 697; 9 Michigan Law Review, 444. See Hepburn, Cases on Torts, 1112, note. A mooted question is whether or not the rules of proximate cause are the same in admiralty as at common law, 18 Harvard Law Review, 537. If admiralty courts will divide damages even when the negligence of one vessel is only remotely causative of the accident, much of the merit of the rule of divided damage disappears. While there are some cases that have so held, usually the same rule has been applied, i. e., the negligence of both vessels must really contribute. A discussion of this interesting question is outside the scope of the present note. See 18 Harvard Law Review, 537; Marsden, Collision at Sea (7th ed.) p. 31.

[2] But this was done in Macon & W. R. Co. v. Winn (1858) 26 Ga. 250, and see 2 Bohlen, Cases on Torts, 1372 note, for legislation to same effect.

have been working to modify their own rules of equally divided damages so admired by the common lawyers. In fact they have never been satisfied with them, recognizing them as being after all but "rude justice."[3] Their tendency has been markedly towards a rule which permits a judge to apportion damages according to the degrees of fault. With regard to collision cases and partly as a result of the Brussels Convention of 1910, now nearly all the more civilized maritime nations have adopted such a rule,[4] though it also has not been without its critics. Their contention is not that the rule of unequal division is theoretically unsound but rather that fault is such an obscure thing and proof of it is so likely not to approximate the actual degrees of blame that a court rarely can find the truth. Therefore, they say, since it is impossible fairly to estimate degrees of fault, the rude justice of an equal division saves time for the judge and is quite as likely to reach real justice as not. They also argue that the new rule breaks down the salutary principle that fault is presumed from certain violations of regulations.[5] However this last may be, the new rule, which recognizes that a court may really sometimes be an instrument of precision, does not take away the judge's power to recognize his impotence in obscure cases, and to divide damages equally as the nearest approach to justice possible.[6]

The United States has not adopted the recommendation of the Brussels convention. The law applied here is still what might be called our own eclectic common law of the sea. For many years a contest was waged in the lower Federal courts as to the justice and reasonableness of dividing loss at all.[7] When the question was first presented to the Supreme Court, it favored the rule of dividing loss because best calculated to procure care on the part of ships and to prevent accidents.[8] Nothing was said in that case as to the proportions with which damages were to be divided, but

[3] 2 Kent, Com. (7th ed.) 231; Marsden, Collision at Sea (7th ed.) p. 139; cf. Foster v. The Miranda (Dist. Ill. 1854) 6 McLean 221, Newb. 227, Fed. Cas. No. 4977.

[4] International Convention for Uniformity of Certain Rules of Law in Regard to Collision, signed at Brussels, September 23, 1910; Marsden, Collision at Sea (7th ed.) p. 230, and Chapter VI; 4 Danjon, Droit Maritime, §§ 1148-1152, 6 Id. §§ 2096-3006; Great Britain, Maritime Conventions Act 1911, 1 and 2 Geo. V, ch. 57; France, Code de Commerce, Par. 407, as amended July 15, 1915, but probably this amendment wrought no change in French law. Danjon, *loc cit.*

[5] For a general discussion of the rules as to division of damages, see Collision at Sea in Relation to International Maritime Law, Louis Franck, 12 Law Quarterly Review, 260; Collision at Sea Where Both Ships Are in Fault, Leslie F. Scott, 13 Id. 17, 241; Henri Rolin, L'Histoire des Règles Juridique en Matière d'Abordage, 31 Revue de Droit Internationale (1899) 432; 4 Danjon, Droit Maritime, §§ 1148-1152, 6 Id. §§ 2096-3006.

[6] E. g. The Peter Benoit (H. of L., 1915) 84 L. J. Prob. 87, 13 Asp. Mar. Law Cas. 203.

[7] Foster v. The Miranda, supra, n. 3; The Bay State (Dist. N. Y., 1848) Abb. Adm. 235, Fed. Cas. No. 1148; The Rival (Dist. Mass., 1846) 1 Spr. 128, Fed. Cas. No. 11,867.

[8] The Schooner Catherine v. Dickenson (1854) 58 U. S. (17 How.) 169, 15 L. Ed. 233.

probably these were tacitly assumed to be equal. In numerous collision cases since then, damages have been divided equally without any discussion or any apparent thought that it might be legally permitted to do otherwise. Finally Mr. Justice Holmes, speaking for the whole court in such a suit,[9] said: "There is nothing stated sufficient to reopen the question, if there is one, as to changing the apportionment when there are different degrees of blame." Nevertheless in a case recently published but not recent in itself, though later than the remark of Mr. Justice Holmes, Judge Young said: "There is no fixed rule as to an equal division of damages, the proportion of division being decided by the facts of each case." *Hudson v. Pittsburg Glass Company.*[10] The case involved, not a collision with another ship, but an injury to a ship from obstructions in the anchorage ground to which she was directed, both the ship and the person so directing her being negligent. On this ground the dictum may be squared with that of Mr. Justice Holmes, but the language is broad and of general application, and though the case principally relied upon by Judge Young[11] was one of personal injury and not one of collision and though he in fact divided damages equally, he shows a preference for the same rule as that recommended by the Brussels convention and a belief, which cannot be downed, that this rule is, without action by Congress, our law. Unfortunately the authorities do not support him. The rule of equal division seems to be settled in cases involving a collision between two or more ships[12] and also in those where an unseaworthy tow is injured by her tug.[13] The rule of unequal division seems, however, fairly firmly established in cases of personal injury, although waiting the final sanction of the Supreme Court.[14] In cases like the principal case there is authority both ways.[15]

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[9] The Eugene F. Moran (1908) 212 U. S. 466, 53 L. Ed. 600, 29 Sup. Ct. Rep. 339.

[10] (Dist. W. D. Pa., 1911, reported 1920) 263 Fed. 730.

[11] The Max Morris (1890) 137 U. S. 1, 34 L. Ed. 586, 11 Sup. Ct. Rep. 29.

[12] See Phoenix Ins. Co. v. The Atlas (1876) 93 U. S. 302, 23 L. Ed. 863, dictum; The Hanson H. Keyes (Dist. Md., 1900) 107 Fed. 537; The Rival, supra, n. 7. Contra, The Mary Ida. (Dist. S. D. Ala., 1884) 20 Fed. 741; The Victory (Circ. Ct. App., 4th Circ., 1895) 68 Fed. 395, semble, but reversed (1897) 168 U. S. 410, 42 L. Ed. 519, 18 Sup. Ct. Rep. 149, a different view of the faults involved being taken.

[13] Mason v. Steamtug William Murtagh (Dist. S. D. N. Y., 1880) 3 Fed. 404; The Wm. Cox (Dist. S. D. N. Y., 1880) 3 Fed. 645 (Circ. S. D. N. Y., 1881) 9 Fed. 672; Connolly v. Ross (Dist. S. D. N. Y., 1882) 11 Fed. 342; The Bordentown (Dist. S. D. N. Y., 1883) 16 Fed. 270; The Syracuse (Dist. S. D. N. Y., 1883) 18 Fed. 828; Phila. and R. R. Co. v. N. E. Transp. Co. (Dist. S. D. N. Y., 1885) 24 Fed. 505; The Atlantic (Circ. Ct. App., 5th Circ., 1920) 262 Fed. 405. The possibility of doing otherwise than dividing equally was discussed in none of these cases. There was, however, a clear difference in fault in The Atlantic, supra. May not this rule have as ancestor, Oleron Art. 14? See The Bordentown, supra.

[14] The Explorer (Cir. E. D. La., 1884) 20 Fed. 135, a stevedore; The Wanderer (Cir. E. D. La., 1884) 20 Fed. 140, a seaman; Olsen v. Flavel (Dist. Ore., 1888) 34 Fed. 477, a mate; The Lackawanna (Dist. S. D. N. Y. 1907) 151 Fed. 499, a passenger; Conley v. Consolidation Coastwise Co.

The whole subject is one that ought to be settled one way or the other. It must be admitted that the tide seems to have set against an unequal division. Though perhaps the average collision case is more complex than the average non-collision case, there is really so little distinction that one may well expect the Supreme Court to say so, and to follow its established precedent of an equal division. Whether it does so or not, our law is wholly at variance with that of foreign civilized nations in the most important matter of all. They allow unequal division in collision cases; we do not; and even though we allow unequal division in some non-collision cases, whereas they apply their local law which may be that of contributory negligence or else the civil law, collision, of all maritime delicts, is that most likely to be international and is therefore that as to which uniformity is most desirable. Congress has adopted the International Rules of the Road with but slight modification[16] and also the recommendation of another maritime convention as to standing by.[17] Though in recent legislation there has been a tendency towards individualization of our own maritime law and an inclination to isolate ourselves,[18] here is an opportunity for Congress to adopt a uniform and fair rule without political danger. The fact that it has been found workable in England should not be looked upon as to its discredit.[19]

*A. T. W. and G. H.*

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(Dist. S. D. Me., 1917) 242 Fed. 591, a stevedore, dictum; John A. Roebling's Sons Co. of New York v. Erickson (Circ. Ct. App., 2d Circ., 1919) 261 Fed. 986, a seaman, dictum. But the rule was queried in The Max Morris, supra, n. 11, and in Pioneer S. S. Co. v. McCann (Circ. Ct. App., 6th, 1909) 170 Fed. 873, 96 C. C. A. 49. Cases arising under state death statutes have been held to be governed by state law with its rules of contributory negligence. Monongahela R. Cons. C. and C. Co. v. Schwinerer (Circ. Ct. App., 6th Circ., 1912) 196 Fed. 375, 117 C. C. A. 193. Whether this is correct or not, the question is now of less importance because of the Federal death act (Act March 30, 1920) Pub. No. 165, 66th Cong., S. 2085; U. S. Comp. Stats. (Pamph. 5A, 1920) § 1251½. If it were held that damages could not be apportioned under this act, it would be a judicial aberration.

[15] Atlee v. Northwestern Union Packet Co. (1875) 88 U. S. (21 Wall.) 389, 22 L. Ed. 619, collision of vessel with a pier, equal division made without comment on the possibility of doing otherwise; Christian v. van Tassel (Dist. S. D. N. Y., 1882) 12 Fed. 884, vessel injured in wharf, equal division made, but unequal division admitted as possible; Snow v. Carruth (Dist. Mass., 1856) 1 Spr. 324, Fed. Cas. No. 13,144, cargo damage, same.

[16] Act. Aug. 19, 1890, ch. 802, 26 U. S. Stats. at L. 320, U. S. Comp. Stats. §§ 7834 ff, 2 Fed. Stats. Ann. (2d ed.) 376, Barnes Fed. Code, § 7179, as amended; see preamble to Act. Feb. 23, 1895, ch. 127, 28 U. S. Stats. at L. 680. See The Delaware (1896) 161 U. S. 459, 40 L. Ed. 771, 16 Sup. Ct. Rep. 516.

[17] Act. Sept. 4, 1890, ch. 875. 26 U. S. Stats. at L. 425, U. S. Comp. Stats. § 7979, Barnes Fed. Code, § 7206, and see 4 Danjon, Droit Maritime, § 1175.

[18] Act June 5, 1920 (Pub. No. 261, 66th Cong., H. R. 10,378) U. S. Comp. Stats. (Pamph. 6A, 1920) § 8146¼ ff, particularly § 34.

[19] The Umona [1914] P. 141; The Rosalia [1912] P. 109; The Sargasso [1912] P. 192; The Bravo (Prob., 1912) 12 Asp. Mar. Law Cas. 311.